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| DISTRICT OF ARIZONA | |
| <u>BY</u> | <u>DEPUTY</u> |

1 DIANE J. HUMETEWA
 2 United States Attorney
 3 District of Arizona

4 WALTER PERKEL
 5 Assistant U.S. Attorney
 6 Two Renaissance Square
 7 40 North Central Avenue, Suite 1200
 Phoenix, Arizona 85004-4408
 Telephone (602) 514-7500
 walter.perkel@usdoj.gov

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 9
 UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

10 United States of America,
 11 Plaintiff,

12 v.

13 Nelson Gutierrez-Sierra
 14 a.k.a. Nelson Olivares-Sierra
 a.k.a. Nelson Gutierrez-Sina
 a.k.a. Orlando Guzman-Gutierrez,

16 Defendant.

No. CR 09-88-PHX-JAT(LOA)
 MAGISTRATE NO. 09-0004M
PLEA AGREEMENT

17 The United States of America and the defendant agree to the following disposition
 18 of this matter:

20 **PLEA**

21 The defendant agrees to plead guilty to Count 3 of the Indictment charging the
 22 defendant with a violation of Title 8, United States Code, Sections 1324(a)(1)(A)(ii) and
 23 (a)(1)(B)(i), Transportation of Illegal Aliens For Financial Gain, a Class C felony.

24 **TERMS**

25 The defendant understands the guilty plea is conditioned upon the following terms,
 26 stipulations, and requirements:

1 Maximum Penalties

2 (a) A violation of Title 8, United States Code, Sections 1324(a)(1)(A)(ii) &
3 (a)(1)(B)(i), is punishable by a maximum fine of \$250,000.00, or a maximum term of
4 imprisonment of ten (10) years, or both, and a term of supervised release of up to three (3)
5 years.

6 (b) According to the Sentencing Reform Act of 1984, the court shall:

7 (1) Order the defendant to make restitution to any victim of the offense
8 unless, pursuant to Title 18, United States Code, Section 3663, the court determines that
9 restitution would not be appropriate in this case;

10 (2) Order the defendant to pay a fine, which may include the costs of,
11 supervised release or incarceration, unless, pursuant to Title 18, United States Code, Section
12 3572, the Court finds upon consideration of the factors therein and in Section 3553 that a
13 fine is not appropriate;

14 (3) Order the defendant, pursuant to Title 18, United States Code, Section
15 3583, to serve a term of supervised release when required by statute or when a sentence of
16 imprisonment of more than one year is imposed, and the court may impose a term of
17 supervised release in all other cases.

18 (c) Pursuant to Title 18, United States Code, Section 3013, the court is required
19 to impose a special assessment on the defendant of \$100.00. Defendant agrees, as a term
20 of this plea agreement, that the special assessment is due at the time defendant enters the
21 plea of guilty, but in no event shall it be paid later than the time of sentencing. Defendant
22 also agrees that if defendant is indigent, the special assessment will be collected in the same
23 manner as would a fine, according to the provisions of Chapters 227 and 229 of Title 18,
24 United States Code.

25 Acceptance of Responsibility

26 Assuming the defendant makes full and complete disclosure to the Probation

1 Department of the circumstances surrounding the defendant's commission of the offense,
2 and if the defendant demonstrates acceptance of responsibility for this offense up to and
3 including the time of sentencing, if the defendant is eligible for the two-level reduction
4 pursuant to Section 3E1.1 of the Sentencing Guidelines and the defendant's offense level
5 before acceptance of responsibility is Level 16 or higher, the United States will stipulate
6 to a three-level reduction in the advisory sentencing guideline offense level, pursuant to
7 Section 3E1.1(b) of the Guidelines.

Agreements Regarding Sentence

9 a. Defendant understands that the Court is required to consider the United States
10 Sentencing Guidelines (“U.S.S.G.” or “Sentencing Guidelines”) among other factors in
11 determining defendant’s sentence. Defendant understands, however, that the Sentencing
12 Guidelines are only advisory, and that after considering the Sentencing Guidelines, the
13 Court may be free to exercise its discretion to impose any reasonable sentence up to the
14 maximum set by statute for the crimes of conviction.

15 b. Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the government and the defendant
16 stipulate and agree that the following is an appropriate disposition of this case:

17 i. The government and the defendant agree the defendant's sentence shall not
18 exceed the term of imprisonment set forth at the bottom of the advisory sentencing
19 guideline range as determined by the Court.

20 ii. The government and the defendant stipulate and agree that the sentencing
21 enhancements pursuant to U.S.S.G. Sections 2L1.1(b)(2), 2L1.1(b)(5), and 2L1.1(b)(8) do not apply.
22

23 c. If the court, after reviewing this plea agreement, concludes any provision is
24 inappropriate, it may reject the plea agreement, giving either party, in accordance with Rule
25 11(d)(2)(A), Fed. R. Crim. P., an opportunity to withdraw from the guilty plea and this
26 agreement.

Agreement to Dismiss or Not to Prosecute

1 a. At the time of sentencing, pursuant to Fed. R. Crim. P. 11(c)(1)(A), the
 2 United States will dismiss Counts 2 and 5 of the Indictment.

3 b. Further, this office will not prosecute the defendant for any additional
 4 offenses committed by the defendant, and known by the government, which are detailed in
 5 the discovery provided to the defendant, and related to violations of 18 U.S.C. § 1203
 6 (Hostage Taking), 8 U.S.C. §§ 1324(a)(1)(A)(iii) & (a)(1)(B)(i) (Harboring Illegal Aliens
 7 for Financial Gain), or 8 U.S.C. § 1326(a) enhanced by (b)(1) (Reentry After Deportation)
 8 on December 30, 2008.

9 c. This agreement does not, in any manner, restrict the actions of the United
 10 States in any other district nor bind any other United States Attorney's Office.

Waiver of Defenses and Appeal Rights

11 The defendant waives any and all motions, defenses, probable cause determinations,
 12 and objections which the defendant could assert to the information or indictment or to the
 13 Court's entry of judgment against the defendant and imposition of sentence upon the
 14 defendant providing the sentence is consistent with this agreement. The defendant further
 15 waives: (1) any right to appeal the Court's entry of judgment against defendant; (2) any
 16 right to appeal the imposition of sentence upon defendant under Title 18, United States
 17 Code, Section 3742 (sentence appeals); and (3) any right to collaterally attack defendant's
 18 conviction and sentence under Title 28, United States Code, Section 2255, or any other
 19 collateral attack.

Reinstitution of Prosecution

20 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any
 21 court in a later proceeding, the government will be free to prosecute the defendant for all
 22 charges as to which it has knowledge, and any charges that have been dismissed because
 23 of this plea agreement will be automatically reinstated. In such event, defendant waives any
 24
 25
 26

1 objections, motions, or defenses based upon the Speedy Trial Act or the Sixth Amendment
2 to the Constitution as to the delay occasioned by the later proceedings.

3 Disclosure of Information to U.S. Probation Office

4 The defendant understands the government's obligation to provide all information
5 in its file regarding defendant to the United States Probation Office.

6 The defendant fully understands and agrees to cooperate fully with the United States
7 Probation Office in providing:

8 1. All criminal history information, i.e., all criminal convictions as defined under
9 the Sentencing Guidelines.

10 2. All financial information, e.g., present financial assets or liabilities that relate
11 to the ability of the defendant to pay a fine or restitution.

12 3. All history of drug abuse which would warrant a treatment condition as part
13 of sentencing.

14 4. All history of mental illness or conditions which would warrant a treatment
15 condition as a part of sentencing.

16 Effect on Forfeiture Proceedings

17 Nothing in this agreement shall be construed to protect the defendant from civil
18 forfeiture proceedings or prohibit the United States from proceeding with and/or initiating
19 an action for civil forfeiture. Further, this agreement does not preclude the United States
20 from instituting any civil proceedings as may be appropriate now or in the future.

21 WAIVER OF DEFENDANT'S RIGHTS AND FACTUAL BASIS

22 Waiver of Rights

23 I have read each of the provisions of the entire plea agreement with the assistance
24 of counsel and understand its provisions. I have discussed the case and my constitutional
25 and other rights with my attorney. I understand that by entering my plea of guilty I will be
26 giving up my right to plead not guilty; to trial by jury; to confront, cross-examine, and

1 compel the attendance of witnesses; to present evidence in my defense; to remain silent and
2 refuse to be a witness against myself by asserting my privilege against self-incrimination;
3 all with the assistance of counsel, to be presumed innocent until proven guilty beyond a
4 reasonable doubt, and to appeal.

5 I agree to enter my guilty plea as indicated above on the terms and conditions set
6 forth in this agreement.

7 I have been advised by my attorney of the nature of the charge to which I am
8 entering my guilty plea. I have further been advised by my attorney of the nature and range
9 of the possible sentence and that my ultimate sentence will be determined after
10 consideration of the advisory Sentencing Guidelines. I agree that any guideline range
11 discussed with my attorney is not binding on the court and is merely an estimate.

12 My guilty plea is not the result of force, threats, assurance or promises other than the
13 promises contained in this agreement. I agree to the provisions of this agreement as a
14 voluntary act on my part, and I agree to be bound according to its provisions.

15 I agree that this written plea agreement contains all the terms and conditions of my
16 plea and that promises made by anyone (including my attorney) that are not contained
17 within this written plea agreement are without force and effect and are null and void.

18 I am satisfied that my defense attorney has represented me in a competent manner.

19 I am not now on or under the influence of any drug, medication, liquor, or other
20 intoxicant or depressant, which would impair my ability to fully understand the terms and
21 conditions of this plea agreement.

22 Elements of the Offense

23 The defendant understands that if the case were to proceed to trial, the government
24 would be required to prove the following elements beyond a reasonable doubt before the
25 defendant could be found guilty of the offense to which the defendant is pleading guilty:

26 1. Alejandro Torres-Mojica is an illegal alien;

1 2. The defendant knew or recklessly disregarded the fact that Alejandro Torres-
 2 Mojica is an illegal alien;

3 3. The defendant transported Alejandro Torres-Mojica within the United States
 4 with the intent to assist Alejandro Torres-Mojica to remain in the United States unlawfully;
 5 and

6 4. The offense was committed for the purpose of commercial advantage or
 7 private financial gain.

8 Factual Basis

9 I further agree that the following facts accurately describe my conduct in connection
 10 with the offense to which I am pleading guilty and that if this matter were to proceed to trial
 11 the government could prove the these facts beyond a reasonable doubt:

12 On or about December 30, 2008, at or near Phoenix, in the District of
 13 Arizona, I was operating a motor-vehicle, a Chevrolet Impala, bearing license
 14 plate number ABT7096. The motor-vehicle contained three passengers.
 15 Alejandro Torres-Mojica was among the passengers. I knew that Alejandro
 16 Torres-Mojica was an illegal alien and I intended to assist him in remaining
 17 in the United States unlawfully. I received a financial benefit for transporting
 18 Alejandro Torres-Mojica. Angel Mendoza-Romero, who was in the back
 19 seat of the Chevrolet Impala at the time of the offense, paid me to transport
 20 Torres-Mojica, and to run errands for Mendoza-Romero in relation to
 21 Mendoza-Romero's illegal alien smuggling operation.

22 2-24-09
 Date

23 Nelson Gutierrez-Sierra
 Nelson Gutierrez-Sierra
 24 Defendant

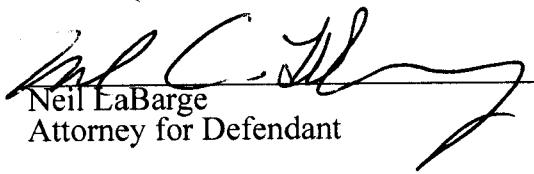
25 DEFENSE ATTORNEY'S APPROVAL

26 I have discussed this case and the plea agreement with my client in detail and have
 27 advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the
 28 constitutional and other rights of an accused, the factual basis for and the nature of the
 29 offense to which the guilty plea will be entered, possible defenses, and the consequences
 30 of the guilty plea, including the defendant's waiver of the right to appeal. I have further
 31 discussed the concept of the advisory sentencing guidelines with the defendant. No

1 assurances, promises, or representations have been given to me or to the defendant by the
2 government or by any of its representatives which are not contained in this written
3 agreement. I concur in the entry of the plea as indicated above and on the terms and
4 conditions set forth in this agreement as in the best interests of my client. I agree to make
5 a bona fide effort to ensure the guilty plea is entered in accordance with all the requirements
6 of Rule 11, Fed. R. Crim. P.

7 I translated or caused to be translated this agreement from English into Spanish to
8 the defendant on the _____ day of _____.
9

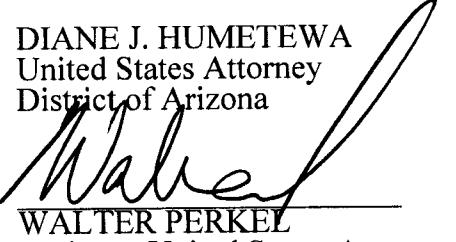
10 2/24/09
Date


Neil LaBarge
Attorney for Defendant

11 **GOVERNMENT'S APPROVAL**

12 I have reviewed this matter and the plea agreement. I agree on behalf of the United
13 States that the terms and conditions set forth are appropriate and are in the best interests of
14 justice.
15

16 2/24/09
Date

17 DIANE J. HUMETEWA
United States Attorney
District of Arizona

18 WALTER PERKEL
Assistant United States Attorney
19

20 **COURT'S APPROVAL**

21 Date _____
22

23 HON. JAMES A. TEILBORG
United States District Judge
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25
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